

ARKANSAS COURT OF APPEALS

DIVISION III

No. CACR 08-150

EVAN LEE MONROE

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered October 1, 2008

APPEAL FROM THE SEBASTIAN
COUNTY CIRCUIT COURT,
[NO. CR-2007-601]

HONORABLE J. MICHAEL
FITZHUGH, JUDGE

AFFIRMED

EUGENE HUNT, Judge

Appellant Evan Lee Monroe challenges the sufficiency of the evidence supporting the revocation of his suspended sentence. On May 16, 2007, Monroe pleaded guilty to possession of marijuana, for which he received a one-year suspended imposition of sentence and a fine of \$500 plus court costs. In August 2007, the State filed a petition to revoke his suspended sentence, in which it alleged that appellant had committed the offenses of domestic battery in the third degree and criminal mischief, and had failed to make payments on his fine and court costs, all in violation of the terms and conditions of his suspended sentence. Following a hearing on October 17, 2007, the trial court found appellant to have violated the terms and conditions of his suspended sentence and sentenced him to serve six months in the county jail and six months' suspended imposition of sentence. We affirm.

To revoke a suspended sentence, the trial court must find by a preponderance of the evidence that the defendant inexcusably violated a condition of that suspended sentence. Ark. Code Ann. § 5-4-309(d) (Repl. 2006). In a revocation hearing, the burden is on the State to prove a violation of a condition of the suspended sentence by a preponderance of the evidence. *Stultz v. State*, 92 Ark. App. 204, 207, 212 S.W.3d 42, 43 (2005). In order to revoke a suspended sentence, the State need only prove one violation. *Id.* at 208, 212 S.W.3d at 44. The trial court's findings are upheld on appellate review unless they are clearly against the preponderance of the evidence. *Id.* at 207, 212 S.W.3d at 43. Also, evidence that is insufficient for a criminal conviction may be sufficient for the revocation of probation or suspended sentence. *Haley v. State*, 96 Ark. App. 256, 258, 240 S.W.3d 615, 617 (2006).

One condition of appellant's suspended sentence was that he pay a fine of \$500 and court costs of \$150, at the rate of \$120 per month beginning July 1, 2007. As the sole piece of evidence of appellant's failure to pay the fine and court costs, the prosecution introduced a fine and court costs ledger, showing that appellant had made no payments in July, August, September, or October 2007. Appellant contends that the State's failure to introduce evidence that his failure to pay was willful precludes his being incarcerated for that violation.

Appellant is correct in that he cannot be punished by imprisonment solely because of his failure to pay fines absent a determination that the failure to pay was willful. *See Bowen v. State*, 12 Ark. App. 147, 671 S.W.2d 763 (1984) (citing *Bearden v. Georgia*, 461 U.S. 660 (1983)). The burden of proof remains on the State to show that the appellant's failure to pay was inexcusable. However, once the State has introduced evidence of non-payment, the burden of going forward shifts to the defendant to offer some reasonable excuse for non-payment. *Reese v. State*, 26 Ark. App. 42, 44, 759 S.W.2d 576, 577 (1988). We have previously stated that to hold otherwise would place a burden

upon the State which it could never meet -- it would require the State, as part of its case in chief, to negate any possible excuses for non-payment. *Id.* at 44, 759 S.W.2d at 577. Since appellant in this case allowed the payment ledger to be introduced without objection and offered no evidence whatsoever as reason for his non-payment, the revocation of appellant's suspended sentence on this basis was not error.

As stated above, the State need only prove one violation of the terms and conditions of appellant's suspended sentence for a suspended sentence to be revoked. However, we also find the evidence sufficient for revocation based on the domestic battery and criminal mischief charges. Another condition of appellant's suspended sentence was that he not violate any law. In this case, the trial court's findings that appellant committed domestic battery and criminal mischief are also not clearly against the preponderance of the evidence. The victim of the domestic battery charge, appellant's wife, testified regarding the battery and the criminal mischief charge, which she witnessed. Her testimony alone provided sufficient evidence for the trial court to have found appellant in violation based on those charges. Appellant argues that the trial court "arbitrarily" disregarded the testimony of three defense witnesses who testified that they were present at the apartment when the alleged battery took place. Appellant's argument in this regard amounts to a weighing of the credibility of the witnesses. It is well settled that the appellate court defers to the superior position of the trial court to evaluate the credibility of witnesses. *See Higgins v. State*, 94 Ark. App. 328, 330, 230 S.W.3d 316, 318 (2006). Thus, there was sufficient evidence for the trial court to have found that appellant violated the terms and conditions of his suspended sentence.

Affirmed.

HART and GRIFFEN, JJ., agree.